

1 or form.

2 If this theory were correct, a service  
3 interruption anywhere in the network could be defined as  
4 recombining unbundled elements, and in kind of a ludicrous  
5 example a CLEC could dispatch a technician to the customer's  
6 premise, unplug the inside wire at the network interface  
7 device, plug it back in and claim that they have now  
8 recombined the loop and the inside wire and, therefore, now  
9 justified the UNE prices.

10 It is a ridiculous example, but that is what we  
11 are talking about. We are talking about ridiculous examples  
12 to convert total services resale to a different price point.  
13 These methods are in reality resale with service  
14 interruptions, nothing more than sham unbundling.

15 One last item before closing. As an additional  
16 alternative to virtual and physical location, BellSouth is  
17 considering and is negotiating as a business offering -- not  
18 as a 271 requirement, but as a business offering -- a charge  
19 combining UNEs at the request of the CLEC. We have embraced  
20 local competition for resale unbundled elements and their  
21 connection. We are providing unbundled network elements.

22 The terms of the Act recognize that CLECs will  
23 take risk commensurate with the methods they choose to enter  
24 the market, and the methods that we are offering provide the  
25 CLECs that choice in conjunction with their business plan.

1 Thank you.

2 MS. MATTEY: Thank you.

3 Mr. Glover?

4 MR. GLOVER: After a long day like this, it is  
5 kind of hard to figure out where to jump in. I remember  
6 watching the Watergate hearings years ago, and Howard Baker  
7 kept coming back to what he viewed as kind of the  
8 fundamental questions. What did the President know, and  
9 when did he know it? This is not a Bill Clinton joke.

10 I guess the fundamental questions here are what  
11 does the Act require, and why does it require it? When you  
12 get back to that basic level, at the risk of using up some  
13 precious time out of my five minutes, I think it gives us a  
14 pretty good basis on which to evaluate some of the  
15 alternatives that have been proposed to collocation.

16 What does the Act require? Well, it requires  
17 incumbent carriers to provide to competitors who do not yet  
18 have all of their own facilities to serve particular  
19 customers two ways in which to reach customers. One is  
20 resale, and one is through unbundled elements.

21 The distinction between those two is critical. It  
22 is critical as John Dingle and Chairman Bleighley in a  
23 bipartisan group of legislators explained to the Eighth  
24 Circuit for two reasons. One is to avoid undermining some  
25 of the subsidies that have been built into retail rates at

1 the intrastate level, and it is critical to avoid  
2 eliminating incentive to build a competitors own facilities  
3 by providing a risk free profit stream without taking the  
4 risk of deploying your own facilities.

5 In terms of what the language of the Act actually  
6 requires, you can walk through it in piece parts. First,  
7 what does it require? It requires, at least in terms of  
8 unbundled elements that the incumbent LECs provide to their  
9 competitors unbundled elements, elements on an unbundled  
10 basis, which the FCC in its original Order defined as  
11 facilities of the network and the related functionality  
12 separate from other facilities and the related  
13 functionality, which the FCC and AT&T both explained to the  
14 Supreme Court meant physically separated elements.

15 Where do we have to provide access to the  
16 unbundled elements? In any technically feasible point,  
17 which, as the Eighth Circuit explained and John Lenahan  
18 pointed out before, means some physical place in the world,  
19 some physical place in our network.

20 How do we provide access? We provide access, as  
21 the FCC says, by allowing competitors to make a connection.  
22 How do they make the connection? The statute answers that  
23 as well. It says that they make the connection through  
24 collocation, be it physical or virtual.

25 Why does it require those things? A very

1 fundamental competition policy; for the very same reasons  
2 that Congressman Dingle and others pointed out. It is to  
3 avoid undermining the subsidies that are built into rates,  
4 and it is to preserve incentives to build competitive  
5 facilities.

6 Carriers can, and in Bell Atlantic's case in New  
7 York we have proposed a number of different ways in addition  
8 to what the Act actually requires as a way to allow  
9 competitors to combine elements. We have proposed  
10 variations on collocation through smaller space allocations,  
11 by allowing competitors to share space through proposals  
12 such as extended loop, through assembly room options, by  
13 proposing to combine on behalf of competitors some elements,  
14 but that is something that has to be voluntary, something  
15 that under the Act cannot be required. It has to be  
16 addressed in the context of negotiations as the Act  
17 prescribes.

18 To the extent competitors have argued that we  
19 ought to be required to do more, I guess they have made  
20 three key points at least that I have heard today. One is  
21 that it is somehow discriminatory if competitors have to  
22 connect individual unbundled elements themselves, as the Act  
23 says they have to, whereas when the incumbent signs up a  
24 customer, at least one that already has service or has had  
25 service in the past, they do not have to make a physical

1 connection.

2 At the end of the day, that boils down to, I  
3 guess, to draw a Franco Harris analogy instead of a Richard  
4 Nixon analogy, the counterpart to the immaculate reception.  
5 It is an immaculate connection theory. They say these  
6 elements in our network were I guess originally connected  
7 through some act of divine intervention rather than through  
8 the act of mere mortal hands, but the fact is that the  
9 elements had to be combined at some point. We did that.

10 When competitors who are building their own  
11 networks put together elements, whether they are getting  
12 some of them from us or they are providing their own  
13 elements, they have to physically connect them. To the  
14 extent there is discrimination here, it is discrimination  
15 created by things like the platform, which gives AT&T and  
16 MCI and the long distance carriers a free lunch, whereas we  
17 and competing facilities based carriers actually have to  
18 incur a cost to build our networks.

19 The other point they make, or at least one of the  
20 other points they make, is the statute says we have to  
21 provide access at any technically feasible point and that  
22 somehow suggests that we have to provide access to them in  
23 any technically feasible way.

24 That is just a variation on the argument that they  
25 made and lost in the Eighth Circuit. In the Eighth Circuit,

1 themselves. What the Eighth Circuit did not address but the  
2 Act does is how they do that. What the Act says is that  
3 they do that by obtaining access through collocation.

4 A couple specific examples that have been raised  
5 today that I will knock through real quickly because I think  
6 I am running out of time. One is the notion that we have to  
7 allow competitors to do virtual combinations, I guess a  
8 variation on the virtual reality theme. We have to allow  
9 them to use the Recent Change feature to connect elements.

10 One of the things that was interesting this  
11 morning was Bob Falcone essentially conceding what that  
12 proposal really is. It is a proposal that, as he put it,  
13 the incumbent LEC connects the physical elements and  
14 provides to the competitors a platform of pre-combined  
15 elements. That is the exact issue the Eighth Circuit  
16 already addressed. The exact issue.

17 The question was can competitors get access to a  
18 completely pre-combined, preassembled bundled package of  
19 network elements, and that is exactly what AT&T is proposing  
20 here and is exactly what the Court has already said the Act  
21 does not permit.

22 Finally and briefly, the other alternative that  
23 was mentioned moments ago was the notion of providing  
24 competitors with direct access to our frames. Now, might an  
25 incumbent agree to do that voluntarily? I suppose. I am

1 one of the issues was whether we had to provide access to  
2 every network element that it is technically feasible to  
3 provide. The Eighth Circuit said no, that is not what the  
4 Act says.

5 What the Act says is that you have to provide  
6 access to individual elements at technically feasible  
7 points, and a point is a place. It is a place in the world.  
8 It is a place in our network, and it is a place in our  
9 network where the competitors connect. It has nothing to do  
10 with what elements we have to unbundle, and it has nothing  
11 to do with how we provide access to those elements. That is  
12 addressed elsewhere in the Act.

13 The final point, and I think John Lenahan already  
14 addressed this to some extent, is the notion that the Eighth  
15 Circuit said the competitors do not have to have some of  
16 their own facilities, but the Eighth Circuit was addressing  
17 a very different question than how you get access to  
18 unbundled elements to combine them.

19 The question the Eighth Circuit was addressing was  
20 whether our argument was correct that the CLECs had to bring  
21 to the table a loop or a switch or a transport facility, and  
22 the Eighth Circuit said no, they can buy from you the loop,  
23 they can buy from you the switch, and they can buy from you  
24 the transport facilities. They can do what the Act tells  
25 them that they have to do. They can combine the elements

1 not sure why they would do that for some of the reasons that  
2 Bill Stacy pointed out. Can they be required to do it? No.

3 The Act says that the way competitors get access  
4 to our premises if they want to connect on our premises is  
5 through collocation. If they are going to get physical  
6 access to our premises in any other way, then you are right  
7 back into the problems that we fought out in the D.C.  
8 Circuit in the Bell Atlantic case.

9 There the Commission had Ordered us to provide  
10 physical collocation to allow competitors to access or  
11 network, to come into our central offices, to establish a  
12 presence, to connect to our network. The Court said that  
13 you cannot do that, not without express statutory  
14 authorization. If you do it without express statutory  
15 authorization, it is an unconstitutional taking.

16 The only statutory authorization there is here is  
17 to provide for collocation. Anything beyond that is a  
18 taking. Contrary to the suggestion I guess of Len that  
19 transitory access to the extent you are just wandering back  
20 and forth through the central office so that you can connect  
21 to our frames is somehow not the same thing just does not  
22 hold water.

23 That has been expressly addressed by the Courts,  
24 and the answer is that anything in the nature of an easement  
25 that just allows you to wander to and fro is a taking. It



1 is a physical occupation. It is a physical right of access,  
2 and that is something that cannot be done without express  
3 statutory authority, and that is lacking here.

4 That is even putting aside the security concerns  
5 that Bill Stacy raised. It is putting aside the other legal  
6 problems that would be raised by giving competitors direct  
7 access to our circuits, problems of forcing them to incur  
8 liability for the acts of others, incur liability under our  
9 tariffs, occur liability under contracts with our customers,  
10 real legal problems with providing competitors just the  
11 ability to roam freely around our central offices.

12 In a nutshell, and I think I used up my allotted  
13 time, the Act already addresses all of the salient questions  
14 here and addresses it quite specifically and directly. What  
15 the Act says is that vendors can get access to unbundled  
16 elements.

17 They can use those elements to build their own  
18 networks either by combining all the elements from us, as  
19 the Act has currently been construed; we think wrongly, but  
20 that is an issue for the Supreme Court, or they can build  
21 their own network by using some of their own elements and  
22 some of ours. When they do that, they do the combining, and  
23 the Act provides a process for them to do the combining.

24 MS. MATTEY: Okay. I have a few questions, but I  
25 was wondering if the folks on this side of the room had any

1 immediate comments they wanted to make back before I ask my  
2 questions? I am not trying to put you on the spot, but --

3 MR. CALI: No. Gladly, if I may. One thing I  
4 think we all have to agree, as Mr. Stacy proved Mr. Gillan  
5 wrong on at least one important point, and that is history  
6 is in fact repeating itself.

7 The concerns being raised with direct access to  
8 the MDF, as well as the Recent Change in terms of network  
9 reliability and security, are easily addressed. The ILECs  
10 figured out how to address them when they gave their CENTREX  
11 customers software access to Recent Change.

12 In addition, in terms of physical access to the  
13 MDF, the ILEC technicians are not the only folks who access  
14 those frames today. I mean, there are certified vendors who  
15 go in and do that. If there is a real concern about letting  
16 CLECs in to touch those frames, you can use certified  
17 vendors. You can have a certification process, so I think  
18 there are ways to manage the reliability and security  
19 concerns that have been raised. That is just one point I  
20 wanted to make.

21 MR. GILLAN: I guess I heard Mr. Stacy slightly  
22 differently because I guess I thought we were going to get  
23 back to history repeating itself, but I only heard that  
24 technically it is not feasible to provide access to the  
25 Recent Change process today.

1 I never heard anything that remotely resembled  
2 that the methods being proposed, which admittedly would take  
3 six months to implement, would not be technically feasible,  
4 so I am still not going to paint him with a brush  
5 disagreeing that this is technically feasible.

6 MR. DAVIS: I am going to take optimism in the  
7 fact that Mr. Stacy nor Mr. Glover raised the same security  
8 concerns nor the same legal concerns associated with  
9 redefinition of UNES as they did with Extended Link.

10 MS. MATTEY: I am going to start ahead with a few  
11 questions over to this side of the room.

12 As mentioned by Mr. Cali, do BellSouth and Bell  
13 Atlantic contract with outside vendors to perform work in  
14 their central offices? If so, why would the use of those  
15 same vendors to combine network elements on behalf of new  
16 entrants pose any additional network reliability claims?

17 MR. GLOVER: I will take it first. In terms of  
18 contracting with vendors, we contract with vendors to do the  
19 same kinds of things that they do in our offices on behalf  
20 of CLECs -- initial construction, construction of central  
21 office space, construction of collocation sites.

22 What we do not use vendors for is to get direct  
23 access to the frames. In terms of who makes the connections  
24 on the frames, that is our people.

25 MS. MATTEY: Okay.

1           MR. STACY: And BellSouth's position is exactly  
2 the same. I would be remiss in not mentioning that we  
3 happen to be a unionized company, and that is a very tightly  
4 defined CWA work function. If they caught us using a vendor  
5 to do that kind of work on the frame, we would all be in  
6 deep trouble, so we simply do not do that with a contractor.

7           MS. MATTEY: Okay. Also, and I may not have fully  
8 understood your argument. If I have not got it right,  
9 please set me straight.

10           Is it your position that Recent Change is not  
11 authorized by the statute, or is your position that it would  
12 be a taking even if it were authorized by the statute or  
13 both? I guess this is mainly for Mr. Glover.

14           MR. STACY: Yes. I was going to say, I did not  
15 address the taking.

16           MR. GLOVER: Well, he accused me of being a  
17 lawyer, which I guess in his mind makes me the ugly dog.

18           Two steps in the taking analysis. One is is the  
19 taking authorized by the statute? The second is is there  
20 just compensation? In this instance, if there is no  
21 statutory authorization then it could be a taking.

22           One of the questions with Recent Change is do they  
23 have to locate anything on our premises? Do they have to  
24 get access to our premises? From the description this  
25 morning, it sounds like maybe the answer is yes. If that is

1 the case, there may well be some Fifth Amendment concerns  
2 with the Recent Change process, as well as with getting  
3 direct access to the frames.

4 MS. MATTEY: Okay. This question is directed at  
5 Mr. Cali.

6 Could you expand a little bit on your discussion  
7 in your prepared remarks of why there are costs and risks  
8 associated with the Recent Change process that are imposed  
9 on CLECs and that is, in your mind, distinguishable from the  
10 Eighth Circuit?

11 MR. CALI: Sure. As a preliminary matter, there  
12 are lots of differences between the use of unbundled network  
13 elements and resale that go apart from the combination  
14 element and the things the Commission already found in its  
15 first report and Order.

16 In addition, Recent Change is going to require us  
17 to settle on specifications with the RBOCs about the types  
18 of electronic access we are going to have to the OSS or  
19 their switches. We are going to have to build the systems  
20 to make those work. We are going to have to integrate that  
21 system with our own ordering systems, and then we are going  
22 to have to train our people and make sure they can send down  
23 the messages to reconnect the elements that will be  
24 necessary.

25 There are costs in that, and because there are

1 costs, up front costs, there is a business risk in doing it.  
2 There is also substantial risk to customers that if we fail  
3 to do it correctly or there is some failure in the systems,  
4 they will be out of service.

5 An important point here is nowhere did the Eighth  
6 Circuit say that the cost of recombining the elements had to  
7 be the most egregious cost, the most anti-competitive, anti-  
8 consumer form of access. What they noted was that their  
9 ruling on the unbundling or the rebundling or the  
10 recombination of elements just would add to the cost of  
11 using UNEs. Clearly, Recent Change does that.

12 MS. MATTEY: Okay. This is directed mainly at Mr.  
13 Cali and Mr. Gillan.

14 You know, both of you have advocated the use of  
15 Recent Change as a method for combining network elements.  
16 Assume for the moment that the Commission concludes that the  
17 Act does not allow a Bell company to offer Recent Change.  
18 Could you explain whether direct access meets the Act's  
19 non-discrimination requirement?

20 MR. CALI: Direct access to the MDF? Is that what  
21 you are saying?

22 MS. MATTEY: Yes.

23 MR. CALI: I have a couple of concerns, and it  
24 goes to something Mike Glover had said. Clearly the loop  
25 was initially wired to the switch by mortal hands over the

1 last 100 years, and I suspect in most cases those mortal  
2 hands were vendor hands, but that is part of the monopoly  
3 legacy that the Act is trying to level here.

4 The concern I have with the non-discrimination and  
5 the use of direct access to the MDF, as superior as it may  
6 be to use of collocation, is you can think of a couple  
7 examples. The customer that moves down the block. We will  
8 be competing with the RBOC to win that customer's local  
9 service business.

10 There are some concerns with direct access. When  
11 an RBOC can -- two things -- essentially disconnect the  
12 element from the original home and reconnect it  
13 electronically, we should have that same capability.

14 What if that customers being served by an IDLC  
15 loop? We could not provide the same quality of loop as they  
16 if in fact you are going to disconnect it because no one has  
17 suggested they will go in and disconnect at the end office  
18 the IDLC loop because that would take down a whole bunch of  
19 customers, so instead what they propose to do is roll that  
20 to a piece of copper that would then be disconnected, and  
21 that would be old technology and raise the same  
22 discriminatory concerns that we have.

23 MS. MATTEY: Is there any comments that any of  
24 you, Mr. Glover or Mr. Stacy, want to follow up on any of  
25 those points?

1 MR. GLOVER: I guess my microphone is not working  
2 since we are back to the vendor point, but other than that I  
3 will let it drop.

4 Don Davis did mention one thing. He asked whether  
5 we had the same kinds of security concerns when we provide  
6 to CLECs particular combinations of elements. The answer to  
7 that is no.

8 To the extent we have combinations, obviously the  
9 concern is of having seven or eight or nine different  
10 competing carriers in the central office trying to do work  
11 simultaneously when even with the best of intentions there  
12 is going to be accidents that are going to occur and  
13 accidents that we are going to be held responsible for.  
14 Those kinds of concerns are mitigated.

15 From a legal standpoint, though, to address Don's  
16 point, I think the Act is on its face pretty clear that what  
17 is legally required is that we provide the individual  
18 unbundled elements and that the combinations actually be  
19 done by the CLEC.

20 Now, have we agreed in many instances, including I  
21 think with Don's company to some degree, that there may be  
22 instances in which we will provide some combinations? Yes,  
23 we have.

24 In places like New York we have agreed to a number  
25 of things, but that is different than saying that the Act



1 allows either federal or state regulators to require us to  
2 do the combinations.

3 MR. GILLAN: Can I seek a clarification of the  
4 question? I understood your question to be, the first part,  
5 does the Act require access to Recent Change, and --

6 MS. MATTEY: The premise was assume the Commission  
7 concluded no.

8 MR. GILLAN: That the Act does not require?

9 MS. MATTEY: That the Act does not require.

10 MR. GILLAN: Okay. I just want to make this point  
11 then. It seems to me that the conclusion that the Act  
12 requires access to Recent Change has already been reached.  
13 When we buy the unbundled local switch, we have an  
14 entitlement to use the Recent Change process.

15 The only real question before the Commission is  
16 whether or not the use of the Recent Change process to both  
17 separate network elements and then for the entrant for them  
18 to combine again satisfies the Eighth Circuit.

19 I just wanted to make sure that --

20 MS. MATTEY: Yes.

21 MR. GILLAN: To me that is an important  
22 distinction because it goes to really the one point of the  
23 response that I would like to point out. There is nothing  
24 in the Eighth Circuit that requires physical separation.  
25 There is nothing in there at all. It is only an ILEC desire

1 to use physical separation as the tool to increase the  
2 entrants' costs.

3 I cannot see anything in that Order that means  
4 that the loop and the switch network element, a network  
5 element that is defined as a capability, not a physical  
6 thing, can be separated using Recent Change, and that  
7 separation is just as real as if you had ripped it apart.

8 The comment from the gentleman from the staff at  
9 Texas, who I guess has left the room, pointed out that in  
10 any situation where there is not warm dial tone. When that  
11 separation occurs there is a physical break and an  
12 electronic path even between the switch and the loop  
13 functionality.

14 MS. MATTEY: Following up on that, I mean, what is  
15 your response to the question of whether the Eighth Circuit  
16 does in fact require physical separation? I mean, is there  
17 some language in the opinion you can point us to?

18 MR. GLOVER: The Eighth Circuit, throughout its  
19 opinion, at least the relevant portion, talks about  
20 providing access on an unbundled basis so that competitors  
21 can combine the elements. Combinations in and of itself is  
22 a physical act of combining the elements.

23 If you look at the Act, you get the same key  
24 concepts. In terms of what we have to provide, it is  
25 individual network elements, which are the physical

1 facilities and pieces of equipment, as the Act defines what  
2 a network element is.

3 If you look at the FCC's first report and Order,  
4 in Paragraph 268 it talks about elements as facilities and  
5 the functionality of those facilities separate from the  
6 facilities and functionalities of other elements.

7 If you look at the FCC's brief to the Supreme  
8 Court during the cert round at page 25, if you look at  
9 AT&T's brief to the Supreme Court at pages 23 to 26, they  
10 both describe the Eighth Circuit's opinion as requiring that  
11 the elements be "physically separated." I do not think  
12 there is a great deal of dispute about what the Eighth  
13 Circuit's Order requires.

14 MS. MATTEY: Go ahead.

15 MR. DAVIS: I would like to respond to that  
16 relative to there is nothing within the Act or the Eighth  
17 Circuit that defines a loop as being the combination of a  
18 NID, distribution, a feeder, etc.

19 The FCC in its own wisdom can define a UNE to be  
20 any functionality it decides to. If you look back in the  
21 Act, the Act supports that. The Act says that a network  
22 element includes features, functions and capabilities, so  
23 the act of combining what is today known as a loop with a  
24 multiplex or an interoffice facility is not necessarily a  
25 combination in terms of that is a distinct functionality

1 that the FCC or a state can determine. In fact, in New York  
2 they have determined that that is a functionality that is  
3 required by the Act.

4 MR. GLOVER: Just to take issue with Don on one  
5 thing, what the Act actually says is that a network element  
6 is the piece of equipment or facility and the features,  
7 functions and capabilities of that piece of equipment or  
8 facility, not features and functions and capabilities  
9 separately.

10 MR. GILLAN: Although I would point out it does  
11 not say individual piece of equipment.

12 MR. CALI: The features, functions and  
13 capabilities provided by that equipment. I mean, we really  
14 are talking about functionalities here. Now you are into  
15 the world of how do you disconnect elements.

16 If you are an ILEC customer today and I win you,  
17 yesterday you were getting your OSDA service by having your  
18 traffic flow up the loop, over the switch, across the  
19 switch, down some trunks to the OSDA platform. The RBOC is  
20 not at all suggesting that when I win you as a customer they  
21 are going to rip down that trunk. They cannot. They have  
22 other traffic on it.

23 They will send a software command to the switch  
24 that will disconnect the functionality of the switch you are  
25 using for your service from that OSDA platform if in fact

1 they are even going to separate OSDA from the switch. They  
2 may then say to me nail up a new trunk between OSDA and the  
3 switch, or I may already have one in place, but that does  
4 not reconnect the functionality of the loop and the switch  
5 with OSDA.

6 They will have to send a software command to the  
7 switch to insure you get OSDA service from me, your new  
8 provider, because I am using their elements to provide  
9 service. There is not a physical separation that will take  
10 place between the OSDA platform and the switch. They will  
11 disconnect the functionality for you and maybe route it over  
12 a different trunk route, but the fact that I put the trunk  
13 route in does not connect the functionalities.

14 MS. MATTEY: Mr. Gillan has contended that the  
15 Recent Change function is already included as part of the  
16 unbundled switch network element. I am directing this at  
17 Mr. Stacy and Mr. Glover.

18 Does the Recent Change function currently exist as  
19 part of the switch? If not, how must the switch be upgraded  
20 or modified to include that function?

21 MR. STACY: The ability to do a Recent Change  
22 obviously exists as part of the switch. You get that from  
23 the switch vendor.

24 The ability to initiate a transaction that  
25 modifies the Recent Change is also very carefully defined

1 both for the switch port unbundled network element and for  
2 total services resale where the CLEC sends the ILEC an order  
3 in the form of a local service request, and that order  
4 creates the transactions necessary to do all of the billing  
5 functionality changes that are required and to do whatever  
6 Recent Change work is required.

7 He is right halfway in the fact that it exists.  
8 Of course, it has to exist or the switch does not function.  
9 What he is not correct in is that access to that  
10 functionality, direct access to that functionality, was  
11 defined as part of the OSS function of ordering.

12 The way you access that functionality is to place  
13 an order with BellSouth to do that, and when you place an  
14 order we indeed do a Recent Change transaction on behalf of  
15 the CLEC to provision service.

16 MS. MATTEY: Okay. I have one last question for  
17 the panel, actually one panelist, before I turn it over to  
18 the audience. This is directed at Mr. Davis.

19 Could you please elaborate on why Intermedia's  
20 proposal to redefine network elements to include  
21 combinations of such elements is consistent with the Eighth  
22 Circuit determination that incumbents are not required to  
23 combine network elements?

24 MR. DAVIS: Because of the way the Act is worded  
25 relative to network elements, including the features,

1 functions and capabilities that are made possible by  
2 facilities and equipment, we believe that you in effect can  
3 define a UNE to be any discrete set of functions that you  
4 desire. Therefore, in the Eighth Circuit Order they  
5 reaffirm the fact that the FCC was the proper party to  
6 define what is a network element.

7 The problem that we have is people go to the  
8 checklist, and they see loops. That is what they  
9 immediately jump to is those checklist items as being the  
10 required UNEs.

11 If at the point in time all of this was being done  
12 we had known the combinations were not going to be possible,  
13 we would have argued for different definitions than were  
14 adopted. Because we thought combinations were going to be  
15 supported, there was no danger, there was no problem,  
16 associated with breaking those elements down further than  
17 what you needed because you could always put them together.

18 Since that got changed with the Eighth Circuit, we  
19 believe that the proper thing to do is go back and look at  
20 okay, what are the functionalities the CLECs need and,  
21 therefore, define UNEs in that manner. Now, would you  
22 eliminate the ones that are there? Probably not. Do you  
23 need to address some new ones to add to that? Yes, you do.

24 Part of that reason is even if we wanted to use  
25 Recent Change, we cannot really do that on the types of

1 elements that we need. You can only use Recent Change on  
2 elements that have two wire POTs elements that go through  
3 their switch.

4 Trunk elements that go through their switch or  
5 digital elements, which is the primary basis of our network,  
6 are not subject to being able to be used, to access, under  
7 Recent Change, so we need something different to put these  
8 things together in a manner that makes it practical for us  
9 to use them.

10 MS. MATTEY: Okay. I am going to turn it over to  
11 the audience if there are any questions from the floor. I  
12 see a hand over there.

13 MR. QUINN: Mr. Stacy, I am going to ask you a  
14 question kind of similar to the one I asked Mr. Lenahan this  
15 morning.

16 MR. GOLDSTEIN: Excuse me. It would help if you  
17 would identify who you are and who you are with.

18 MR. QUINN: I am sorry. Bob Quinn with AT&T.

19 Mr. Stacy, I am going to ask you a question  
20 similar to the one that I asked Mr. Lenahan this morning,  
21 but first I want to make sure I understand what you are  
22 offering with respect to virtual collocation for  
23 recombination of elements is.

24 As I understand it, BellSouth has basically agreed  
25 that if the CLEC provides a pre-wired frame that BellSouth



1 will then in a virtual collocation setting install that  
2 frame into the central office and then perform the cross  
3 connects onto that frame for both the loop and the port to  
4 do the combination for CLECs. Is that right?

5 MR. STACY: Let me take you through the sequence  
6 because it is not quite right, but it is close.

7 MR. QUINN: Okay.

8 MR. STACY: If the CLEC were to purchase a frame  
9 and have it pre-wired by a vendor and have it installed by  
10 that approved vendor in a BellSouth central office and then  
11 complete the arrangement by leasing it to BellSouth, which  
12 is the way virtual collocation works, but if the CLEC were  
13 to take that series of steps then BellSouth would complete  
14 the activity of tying down a cross connect cable -- not a  
15 cross connect; a cable -- to that frame which was terminated  
16 on the MDF, and then when the cross connects were made on  
17 the MDF they would in effect route the loop and the port, if  
18 that is what was ordered, to the virtual collocation space  
19 of the CLEC and then back out to the loop.

20 MR. QUINN: Who would do the tying down on the  
21 frame?

22 MR. STACY: The BellSouth technician, on an order,  
23 would do the work on the MDF on behalf of the CLEC.

24 MR. QUINN: Okay. Okay.

25 MR. STACY: The CLEC has already done the work on